

AMENDMENT AND RESPONSE TO OFFICE ACTION AND PETITION FOR EXTENSION
OF TIME
U.S. Patent No.: 09/915,027

REMARKS

This Amendment and Response amends claims 67, 68, 70-72, and 75. Claims 58, 60-72, and 75-79 are pending in the application. No fees are believed due for these amendments; however, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account 11-0855.

I. Interview Summary

Applicants would like to thank Examiners Parsley and Swiatek (hereinafter "Examiners") for the courtesies extended during a personal interview conducted on May 10, 2005 to discuss the application, the January 21, 2005 Office action, U.S. Patent No. 5,816,904 to Tieleman ("Tieleman"), U.S. Patent No. 4,059,868 to Meyn ("Meyn '868"), and U.S. Patent No. 4,418,445 to Meyn ("Meyn '445").

The discussion during the interview focused primarily on distinguishing the movement of the separating means recited in claims 58 and 62 and the elongated element recited in claims 67 and 68 from the alleged analogous structures in Tieleman, Meyn '868, and Meyn '445. The January 21, 2005 Office action rejects independent claims 58 and 62 under 35 U.S.C. § 102 as being anticipated by Tieleman. Claim 58 also stands rejected under 35 U.S.C. § 103 as being unpatentable over Meyn '445 in light of EP Patent No. 0432317. Claims 58 and 62 recite a separating means that moves "in a plane which extends substantially perpendicular to the longitudinal axis" defined by the spine of the bird. In contrast, Tieleman and Meyn '445 disclose structure (knife 106 in Tieleman and stretching member 21 with enlargement 24 in Meyn '445) that swing outwardly and upwardly from the bird (*see, e.g.*, Figs. 13 and 14 in Tieleman and left side of Fig. 1 in Meyn '445) in a plane that is substantially parallel, not substantially perpendicular, to the longitudinal axis defined by the bird. The Examiners agreed that the cited references failed to teach the movement recited in claims 58 and 62.

The January 21, 2005 Office action rejects independent claims 67 and 68 under 35 U.S.C. § 102 as being anticipated by Meyn '868. Prior to entry of this Amendment and Response, claims 67 and 68 recited rotation of an elongated element about a substantially vertical axis. The Examiners agreed that the alleged analogous elongated element disclosed in Meyn '868 (lever arm 25 with ball half 24) rotates relative to the bird about a horizontal, not substantially vertical, axis. *See* right side of Fig. 1 and Fig. 2 in Meyn '868. The Examiners, however, believed that

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the distinction between the movement recited in claims 67 and 68 and that disclosed in Meyn '868 would be clearer if such movement were defined relative to the bird. Thus, claims 67 and 68 have been amended to recite a longitudinal axis defined by the spine of the bird and to recite that the elongated element rotates "about an axis substantially parallel to the longitudinal axis."

II. 35 U.S.C. § 112 Rejections

The Action rejects claims 67-72 and 75 under 35 U.S.C. § 112 as being indefinite. The Action rejects claims 67 and 68 for failing to provide antecedent basis for "the belly fat" and "the viscera." Claim 69 was rejected by virtue of its dependency on rejected claim 68. Claims 67 and 68, from which claims 69, 72 and 75 depend, have been amended to recite antecedent basis for "the belly fat" and "the viscera." The Action further rejects claims 70-72 and 75 for failing to provide antecedent basis for "the vent." These claims have been amended to recite "a vent," thereby overcoming the Action's rejection of these claims. In view of these amendments, Applicants respectfully request that this rejection be withdrawn.

III. 35 U.S.C. § 102 Rejections

A. Claims 58, 60-65, 70, 71, and 76-79

The Action rejects claims 58, 60-65, 70, 71, and 76-79 under 35 U.S.C. § 102 as being anticipated by Tieleman. Applicants respectfully traverse this rejection and request that it be withdrawn. Claims 58 and 62 respectively recite a method and a device for processing a carcass having a spine that defines a longitudinal axis. Claim 58, from which claims 60, 61, 70, 76, and 78 depend, further recites the step of breaking at least one tissue connection in the belly fat of the carcass by moving a separating means relative to the carcass between the stomach and the skin in a plane which extends substantially perpendicular to the longitudinal axis.

Claim 62, from which claims 63-65, 71, 77, and 79 depend, recites a separating means that is adapted to enter the carcass and move relative to the carcass between the belly skin and the stomach in a plane which extends substantially perpendicular to the longitudinal axis.

Tieleman discloses a device for cutting a flap in the belly of a poultry carcass. The Action analogizes blade 106 and rod 128 to the recited separating means. Blade 106 and rod 128 are positioned on the end of knife unit 82. See Fig. 2. As shown in Figs. 12-14 of Tieleman, to cut the flap in the bird the blade 106 and rod 128 are lowered into the carcass (see Fig. 12) and then the knife unit 82 with the blade 106 and rod 128 is swung upwardly and outwardly between

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the carcass legs (*see* Figs. 13-14). Vertical movement of the blade 106 and rod 128 as they are lowered into the bird and outward and upward rotation of the blade 106 and rod 128 about a horizontal axis (extending out of the page in Figs. 13 and 14) are the only movements of blade 106 and rod 128. However, both of these movements are in a vertical plane that is substantially parallel to the longitudinal axis, not substantially perpendicular to the longitudinal axis as recited in claims 58 and 62. Thus, at least because Tieleman fails to teach or suggest an separating means that moves in a plane which extends substantially perpendicular to the longitudinal axis as defined by the spine of the bird, it fails to anticipate or render obvious independent claims 58 and 62, or claims 60, 61, 63-65, 70, 71, and 76-79 which ultimately depend from these independent claims.

B. Claims 67-69, 72 and 75

The Action rejects claims 67, 68, 72, and 75 under 35 U.S.C. § 102 as being anticipated by Meyn '868. Applicants' Assignee respectfully traverse this rejection and request that it be withdrawn.

Independent claims 67 and 68, from which claims 75 and 72 respectively depend, have been amended to recite an elongated element that rotates relative to the bird about an axis substantially parallel to the longitudinal axis defined by the spine of the bird. The Action analogizes Tieleman's arm 25 on which ball half 24 as well as knife holder 30 holding knife 31 with a clamping screw 32 are mounted to the recited "elongated element." However, none of these structures rotates relative to the bird about an axis substantially parallel to the longitudinal axis defined by the spine of the bird. The only rotation disclosed in Tieleman that is relative to the bird is rotation of ball half 24 and knife unit 30, 31, 32 attached to ball half 24. As shown on the right side of Fig. 1 and in Fig. 2, to make a cut in the belly of the bird, ball half 24 with attached knife unit 30, 31, 32 moves radially outwardly and upwardly, rotating about a horizontal axis (extending out of the page). Such rotation about a substantially horizontal axis is substantially perpendicular to the longitudinal axis defined by the bird, not substantially parallel to the longitudinal axis as recited in claims 67 and 68. Thus, at least because Meyn '868 fails to teach or suggest an elongated element that rotates relative to the bird about an axis substantially parallel to the longitudinal axis as defined by the spine of the bird, it fails to anticipate or render

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obvious independent claims 67 and 68, or claims 72 and 75 which ultimately depend from these independent claims. These claims are therefore allowable.

IV. 35 U.S.C. § 103 Rejections

A. Claims 58, 60, 61, 70, 76, and 78

The Action rejects claims 58, 60, 61, 70, 76, and 78 under 35 U.S.C. § 103 as being unpatentable over Meyn '445 in view of EP Patent No. 0432317. Applicants respectfully traverse this rejection and request that it be withdrawn.

Meyn '445 teaches inserting a stretching member 21 downwardly through a vent opening and into the body cavity of the bird. The lower end of stretching member 21 has an enlargement 24 that includes a horizontally extending groove 25. After the stretching member is inserted into the bird, it is moved radially outward and upward. Through such movement, the enlargement 24 is able to stretch the skin upwardly and outwardly away from the underlying entrails of the bird. A knife 28 subsequently enters groove 25 and makes a transverse cut in the skin. This stretching of the skin away from the underlying entrails ensure that the entrails are not damaged during the cutting operation.

The Action analogizes enlargement 24 and groove 25 to the separating means recited in claim 58. Meyn '445 discloses only two movements of the enlargement 24/groove 25 that could even arguably be characterized as being "between the stomach and the skin," as recited in claim 58. First, enlargement 24/groove 25 moves vertically down into the bird. This movement is in a plane that is substantially parallel to the longitudinal axis defined by the spine. Second, the enlargement 24/groove 25, mounted on stretching member 21, swings radially outwardly and upwardly, rotating about a horizontal axis (extending out of the page in Fig. 1). This rotation about a horizontal axis defines a vertical plane in which the stretching member 21/enlargement 24/groove 25 moves relative to the bird. This vertical plane is substantially parallel to the longitudinal axis defined by the spine of the bird.

In contrast, claim 58 recites a separating means that moves relative to the carcass in a plane substantially perpendicular to the longitudinal axis of the bird defined by the spine. As explained above, Meyn '445 teaches the opposite trajectory for its alleged separating means – enlargement 24/groove 25 on stretching member 21 moves in a plane that is substantially

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parallel to the longitudinal axis of the bird defined by the spine. Thus, Meyn '445 fails to teach or suggest at least this limitation recited in claim 58.

EP Patent No. 0432317 fails to provide this missing teaching, i.e., a method for breaking tissue connections in the belly fat of a bird by moving a separating means in a plane which extends substantially perpendicular to the longitudinal axis defined by the spine of the bird. Thus, in combination, Meyn '445 and EP 0432317 fail to render obvious claim 58 or claims 60, 61, 70, 76, and 78 which depend from claim 58. These claims are therefore allowable.

B. Claim 66

The Action rejects claim 66 under 35 U.S.C. § 103 as being unpatentable over Tieleman in view of Meyn '868. Applicants respectfully traverse this rejection and request that it be withdrawn. Claim 66 is allowable at least by virtue of its ultimate dependence on allowable claim 62.

B. Claims 69

The Action rejects claim 69 under 35 U.S.C. § 103 as being unpatentable over Meyn '868 in view of U.S. Patent No. 5,186,679 to Meyn. Applicants respectfully traverse this rejection and request that it be withdrawn. Claim 69 is allowable at least by virtue of its ultimate dependence on allowable claim 68.

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PETITION FOR EXTENSION OF TIME

Applicants petition the Commissioner for Patents for a one-month extension of time, through and including May 21, 2005, to respond to the Office Action mailed January 21, 2005. The Commissioner is authorized to charge our American Express card in the amount of \$120 in payment of the requisite fee for a one-month time extension.

The Commissioner is authorized to charge any additional fee relating to this filing to Deposit Account No. 11-0855.

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CONCLUSION

Applicant's Assignee respectfully submits that claims 58, 60-72, and 75-79 are in condition for immediate allowance, and requests early notification of their allowance. If there are any matters that can be addressed by telephone, the Examiner is urged to contact the undersigned.

Respectfully submitted,



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